Previous references.

File No. 194-08

1908.-09

(Courts)

Serial Nos. 142

Later references.

GENERAL AND REVENUE SECRETARIAT

Serial Nos. 142

Part B. for Jan'y '09

SUBJECT.

procedure as to the joint trial of three offences in Crim case N° 18 of 1908 + 1909, on the file of the Subor Divisional magistrate Madhagiri. (Mr V. R. Nagaraja Rao)

Table of Contents:

1. From the Regr. chief court, Mysore. N° 3443/180 dt 1-12-08 forwards a letter from the said subordinate magistrate with reference to the Despatch of the Chief court in an appeal against the order passed by the him in a crim case, - in certain remarks against the magistrate.

2. To the Registrar, Chief court, Mysore, & to the District Magistrate Tumkur N° J. 1868-9. Dt 6-1-09. Directs that displeasure of govt at the irregular conduct of the magistrate above ref. to, may be communicated to him.

G.R.S.11] 1908-09

GENERAL AND REVENUE SECRETARIAT

(Courts)

NOTES.

C.b File No. 194-08

FILE HEADING.

Procedure in regard to the joint trial of three offences in Criminal Case No 18 of 1908-09 on the file of the Sub-Divisional magistrate Maddagiri. (Mr V.R. Thyagaraja Iyer)

From

The Registrar of the Chief Court of Mysore

No. 3443/180 Dated 1-12-1908 Received 3-12-08

Diary No. 9/408	Enclos. one file & papers. Spare Copies	Serial No. 1

BRIEF ABSTRACT OF LETTER.

forwards for such action as Govt may choose to take, a copy of a letter from Mr V.R. Thyagaraja Iyer with reference to the judgment of the Chief Court in an appeal against the order passed by him in Criminal Case No 18 of 1908-09, and adds that the Magistrate apparently does not realize that he has been guilty of gross insubordination

NOTES AND ORDERS.

1. Submitted for orders.

Hez SN 3-12-08 [illegible] GPK 5.12.08

2. In a Criminal Case decided by

Notes—First sheet.

GPB—30,000—3-4-07

G. R. S. 12]
General and Revenue Secretariat.

G File No. 144 of 1904

Serial No.

Mr Thyagaraya Iyer which went up to the Chief Court on appeal, the Chief Court held that there were some irregularities in the trial and directed a retrial. Before the retrial was begun, the Magte wrote a letter to the Chief Court thro the Dt Magistrate, submitting for the consideration of the Judges, the reasons which for the course he took. The Chief Court now send this letter for Govt pn such action as they may choose to take, as it seems to them an act of insubordination to them.

3. It is not perhaps necessary to refer to the points touched by the Magistrate: but they may be briefly adverted to, viz The first point touched by the Chief Court is as to whether a person who has committed house-breaking in order to commit theft, and theft can be charged with + convicted of each of these offences. The Magte framed two charges under Ss 454 + 380. The Chief Court held that the addition of the latter charge is unmeaning. It may be respectfully pointed out that in 23 Bombay 706, the Full Bench of the

NOTE—Contn. sheet.

GPB—50.000—18-5-08

G. R. S. 12]
General and Revenue Secretariat.

File No. 114 of 1906

Serial No.

Bombay High Court held the contrary. And what is more to our purpose, the Mysore Chief Court have held in Chief Court Reports Vol IV 1899. p. 225 that "a conviction under Sec. 380 in addition to a conviction under Sec. 457 for house-breaking in order to the commission of such theft is legal." Per Best. C.J & Ramachandra Iyer J. No reference is made of this case in the Judgment of the Chief Court in the present case. The Authority of the case referred to was of course binding on the Magistrate.

4. (a) The second point is: the Chief Court held that the trial of the accused for two offence – theft (which ~~took place~~ was committed separately) & house-breaking not of the same kind, ~~in~~ all in one trial is illegal under Sec. 234 Cr.P.C. The Magistrate says he held the trial under Sec. 235 (1). Whether theft at one place & house-breaking in another place in the same town or place on the same day are connected together as to form the same transaction, is a point for controversy; & the Chief

NOTE—Contn. sheet.

GPB—50.000—13-5-08

Serial No.

Court have not considered the Question. They assumed that the trial took place under Sc. 234.

5 (3) The third point is as regards the consolidated sentence. The Magte states that he passed a distinct sentence on the 2nd + 3rd charges + another sentence on the first charge. If the Bombay Full Bench case be sound law, the Magte is right in passing one sentence for the 2nd + 3rd charges. In Mysore Law Reports Vol. VIII 1885 p-365, Thumboo Chetty J held that where a person was convicted under Sc. 380 + 457, one sentence for both was enough.

6. If, however, the acts of theft + house-breaking (charges 1 + 2) ~~are~~ do not form the same transaction, the Magte should have tried each charge separately. As pointed out above the Chief Court have not considered this point.

7. So much as regards the merits of the case. However that may be, it is highly unbecoming ~~of the Magistrate~~ ~~to~~ on the part of ~~the~~ a subordinate

NOTE—Contn. sheet.

GPB—50,000—18-5-08

G. R. S. 12]
General and Revenue Secretariat.

GS File No. 174 of 1906

Serial No.

Magistrate to carry on controversy of this kind with the highest judicial tribunal.

Submitted with a draft to this effect

Sec'y)

SPK
11/12/08

The note & the draft are put up under instruction from the under-Secy SPK

8. We are not concerned now with the correctness or otherwise of the view taken by the Chief Court on the one hand, or of that held by the Magte on the other; but have to deal with the matter as one of official procedure & discipline. There is no doubt that the Magte acted in a manner unbecoming his position as a subordinate Magte & subversive of official discipline.

9. It is a pity the Chief Court did not itself pass proceedings condemning the Magte's action, as it has done (if I am not mistaken) in other instances.

10. But the matter having been referred to us, we have to pass suitable orders. Draft slightly revised & submitted.

17/12/08

Submitted to the 1st Councillor

17th Dec

Dis accepted.

9165
17-12-08

Note—Contn. sheet.

GHE—50,000—8-5-08

G. R. S. 12]
General and Revenue Secretariat.

File No. 191 of 1904

Serial No.	
	To the Dewan Sd 2nd Secd. 11334 21.12.08 Dft d appd 23-12-08 2nd Secd Sd 2 To the Registrar, Chief Court & District magistrate, Trichur. Rg 1868-9 dt 4.1.09 – Directs that the displeasure of Govt at the irregular Conduct of Mr. Thyagaraj Iyer be Communi- cated to him.

NOTE—Contn. sheet.

GPB—50.000—18-5-08

III 50 3/1 No 3443 Encl. 680. Sec 1 - 1408

Chief Court of Mysore,

Bangalore dated, 1st December 1908.

From,

V.A.Rajaratna Mudaliar Esq.,

Registrar, Chief Court of Mysore.

To,

K.S.Chandrasekhara Aiyar Esq.,

Secretary to Government,

General and Revenue Departments.

Sir,

I am directed to forward for such action as the Government may choose to take in the matter, a copy of a letter No.64, dated the 23rd October 1908, from the Assistant Commissioner and 1st class Magistrate of Maddagiri (Mr. V.R.Thyagaraja Aiyar), sent through the District Magistrate of Tumkur, with reference to the judgment of this Court in Criminal Appeal No.27 of 1908-9, the record of which is sent herewith. I am to add that the Magistrate apparently does not realize that he has been guilty of an act of gross insubordination.

To be obligingly returned when no longer required.

I have the honour to be,

Sir,

Your most obedient servant;

REGISTRAR.

B.V.

Maddagiri,

No. 64/1. 23rd October 1908.

From,

V.R.Thyagaraja Aiyar Esq., M.A.,
Sub Division Officer,
Tumkur District.

To,

K. Dorasamy Iyer Esq.,
District Magistrate,
Tumkur.

Sir,

With reference to your No.J.252 dated 21-10-08 forwarding with records the order of the Chief Court on Petition of Criminal Appeal No.27 of 1908-09 against my judgment in Criminal Case No.18 of 1908-09, I have the honour to state that I shall of course retry the accused in accordance with the Chief Court's order when he is produced before me by the police; but in the meanwhile I beg to submit, for the consideration of the learned Judges of the Chief Court, the following remarks in justification of the procedure I adopted in the above case.

2. The Chief Court animadvert on my procedure on four points. I shall deal with these seriatum.

(a) The learned Judges say that the insertion of the third charge under section 380 I.P.C. is unmeaning and opposed to the illustration to section 35 of the Criminal Procedure Code.

I may controvert the above view by an appeal to apriori principles; but I shall content myself with citing in support of my procedure the full Bench decision of the Bombay High Court in Reg V.Malu (23 Bom. 706 cited on page 38 of Maynes Criminal Law of India). The Judges there said that a person committing housebreaking in order to commit theft and theft can be charged with and convicted of each of these offences and further that

the

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the Court should in such a case pass one sentence for either of the offences in question and not a separate one for each offence.

As regard the Mysore Chief Court Judges' reference to the illustration to section 35, Criminal Procedure Code, I may submit, with the greatest deference to them, that that section deals with the question of passing sentences on each charge, and does not deal with the framing of charges which is the only point at issue.

(a) The second point is that the joint trial of offences which are not of the same kind is a direct violation of the provisions of section 234, Criminal Procedure Code.

Now, I have nowhere said in my judgment or notes that the trial of the accused on the three charges was under section 234, Criminal Procedure Code.

As a matter of fact I tried together the two charges (under sections 380 & 457 I.P.C.) under section 235 (1), Criminal Procedure Code.

I beg to cite in support of my procedure the following extract from Central Provinces Criminal Circular Part II No.20 (P.565 of the Code of Criminal Procedure by Annaduraiaiyar).

"The fact that the spoil taken consisted of several things whether belonging to the same or different owners does not necessarily break up the unity of the transaction." Further, the decision of the Bombay High Court in Vajiram 16 Bombay 414 (quoted on p.564 of the same book) lays down a similar ruling.

The accused in this case committed the thefts and housebreaking in the same night and in two houses in the same town and they may therefore be considered to form the same transaction, ie, proximate in time and similar in action and result.

(a) The third point is that the consolidated sentence passed by the Magistrate is illegal as the law requires that

there

there shall be a separate finding and a separate sentence for each distinct offence.

In my notes, but not in the judgment, I have recorded the passing of a sentence of 9 months on the 2nd & 3rd charges, ie, for the offences of housebreaking and theft in the shop and of three months on the 1st charge.

However, even on the supposition that only a consolidated sentence was passed in this case, I submit, with all deference to the learned Judges, that the provision in section 35, Criminal Procedure Code, is only permissive and that a Criminal Court is not bound to pass a separate sentence in respect of each of the offences of which an accused person may be found guilty at one trial-vide Ngakyin V.1 Burma L.R.271 (P.Annadurai Aiyar's 2nd Edition of the Criminal Procedure Code).

(a) The fourth point is that a trial held in contravention of the provisions of section 234 Criminal Procedure Code, is illegal and that a conviction in such a case should be set aside.

If, as I have explained above, the case was properly tried under section 235 (1) Criminal Procedure Code, this objection necessarily fails.

3. I have now dealt with all the points raised by the learned Judges of the Chief Court. Of course, as a Subordinate Magistrate I am bound to accept the law as laid down by the highest Criminal Court in the land. I, however, hope they will forgive me if I point out that my procedure was in accordance with the decisions and circulars of the Bombay High Court, the Central Provinces Judicial Commissioner and the Burma Judicial Commissioner.

4. A copy of the Chief Court's order is herewith enclosed for your information and record in your office.

I have etc.,

(Signed) V.R.Thyagaraja Aiyar.

Sub Division Officer, Maddagiri.

"Copy"

Registrar.

B.V.

5

G.R.S. 28]

Gb. File No 194/087

Serial No. 2

Diary No. of letter replied to

Proceedings of the Government of His Highness the Maharaja of Mysore.

GENERAL AND REVENUE SECRETARIAT.

( )

, *the* 190

Date of issue 4.1.09

Signed by M.K.S. Chandrasekhara Iyer.

READ—

Letter No. 3443 dt 1-12-08 from the Regr. Chief Court (180) forwarding for such action as Govt may take, a copy of a letter from the 1st Class Magistrate of Maddur with reference to the Judgment

ORDER THEREON.—No.

of the Chief Court ~~on appeal~~ in Crl Appeal No 270 of 1908-9,

Order thereon No 1868-9 dt 4.1.09

A criminal Case which was decided by the 1st Class Magistrate

over

And observing that the Magte apparently has not realised that he has been guilty of an act of ~~bein~~ insubordination-

SUBJECT :

GPB—6,000—13-5-08

Pl. 9 copies

of Maddagiri, went up on appeal to the Chief Court. The Chief Court held that the trial was vitiated by a number of irregularities and directed a retrial. With reference to this order, the 1st Class Mag[te] wrote the letter under advertence, submitting for the consideration of the learned Judges, some remarks in justification of the course he had adopted in the trial. Govt. desire to record their displeasure at the conduct of the Magistrate. It is highly unbecoming and improper on the part of a subordinate Magistrate to carry on controversy of this kind with the highest Judicial tribunal in the State.

See 4.

for a Magte of his experience should have permitted himself to indulge in criticism of the order of the Chief Court and going out of his way to do so, he has acted in a manner quite unbecoming a subordinate Magte & subversive of discipline. Govt. direct that their displeasure at his conduct be communicated to him.

To

The Registrar of the Chief Court of Mysore

Dist. Mag. Sorab

Dist. Mag. Shimoga